SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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TREVOR DEBLASE and NAN DEBLASE,

Plaintiffs,

- against -

MITCHELL HILL,

Defendant.

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Index No. 522689/2023

Motion Seq. Nos. 1 & 2

BRIEF OF AMICUS CURIAE NONHUMAN RIGHTS PROJECT, INC. IN RESPONSE TO BRIEF FILED BY AMICI CURIAE NEW YORK STATE VETERINARY MEDICAL SOCIETY, AMERICAN KENNEL CLUB, CAT FANCIERS' ASSOCIATION, ANIMAL HEALTH INSTITUTE, AMERICAN VETERINARY MEDICAL ASSOCIATION, AMERICAN ANIMAL HOSPITAL ASSOCIATION, NATIONAL ANIMAL INTEREST ALLIANCE, AMERICAN PET PRODUCTS ASSOCIATION, AND PET INDUSTRY JOINT ADVISORY COUNCIL

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INTRODUCTION[1]

Amici[2] argue dogs cannot be "immediate family" for purposes of New York's zone of danger rule, notwithstanding their cherished status in multispecies households, and despite the devastating emotional harm that results when they are wrongfully killed. At the outset, this Court should be aware of Amici's glaring hypocrisy: virtually all of these organizations—especially the AVMA—have *promoted* treating companion animals as family members, having vested commercial and industrial motives for doing so, and play upon the public's deep emotional connection to these nonhuman animals.[3]

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[1] No party or party's counsel contributed content to this brief or otherwise participated in its preparation, or contributed money intended to fund the brief's preparation or submission. No person or entity, other than amicus or their counsel, contributed money intended to fund the brief's preparation or submission.

[2] All references to Amici's brief are to NYSCEF Doc. No. 55. Amici are the New York State Veterinary Medical Society (NYSVMS), American Kennel Club (AKC), Cat Fanciers' Association (CFA), Animal Health Institute (AHI), American Veterinary Medical Association (AVMA), American Animal Hospital Association (AAHA), National Animal Interest Alliance (NAIA), American Pet Products Association (APPA), and Pet Industry Joint Advisory Council (PIJAC).

[3] NhRP compiled a document of examples showing Amici's promotion of the human-animal bond. (*See* https://bit.ly/3XP4tIZ; *see also* ELAINE T. BYSZEWSKI, *Valuing Companion Animals in Wrongful Death Cases: A Survey of Current Court and Legislative Action and A Suggestion for Valuing Pecuniary Loss of Companionship*, 9 Animal L 215, 230 [2003] ["Because veterinarians make their living from the relationship between human guardians and their companion animals, it is morally bankrupt for veterinarians to insist that companion animals be valued as mere property."]).

In urging this Court to maintain the unjust legal status quo, Amici provide little more than blatantly false assertions, irrelevant and misleading citations, and speculative, sky-is-falling scenarios. They advance two main contentions: (a) dogs cannot be included within New York's zone of danger jurisprudence because current law does not allow emotion-based damages for the loss of companion animals, and (b) such inclusion would lead to a flood of litigation and thereby have disastrous consequences, especially for the welfare of companion animals. Neither argument withstands scrutiny.

Most fundamentally, Amici ignore that this is a common law case, and as such, this Court is not bound by the archaic rules of the past but should align the law with changing societal norms and the demands of justice. Those considerations support including the family dog within one's "immediate family" for purposes of the zone of danger rule. (*See generally* NhRP's Br. 7-18 [NYSCEF Doc. No. 45]).

ARGUMENT

A. New York common law can and should evolve so that the family dog is included within one's "immediate family" for purposes of the zone of danger rule.

Amici's main argument for maintaining the unjust legal status quo—that current law does not allow emotion-based damages for the loss of nonhuman

animals—depends on an unrecognizable conception of the common law foreign to our jurisprudence. Amici assume the common law is an anachronism, unresponsive to reason and changing conditions, and irrelevant to justice, such that the past must irrevocably control the present. But this understanding of the common law is profoundly wrong, representing a gross distortion of our common-law system. (*See generally* NhRP's Br. 5-7).

It is axiomatic that the common law is flexible, not immutable, and transforms over time to accord with changing societal norms and the demands of justice. (*See*, *e.g.*, *Gallagher v. St. Raymond's R.C. Church*, 21 NY2d 554, 558 [1968]; *Woods v. Lancet*, 303 NY 349, 354-55 [1951]). Because "the ever-evolving dictates of justice and fairness" are "the heart of our common-law system," (*Hymowitz v. Eli Lilly and Co.*, 73 NY2d 487, 507 [1989]), common law courts have a "duty to re-examine a question where justice demands it." (*Woods*, 303 NY at 354). They are also duty-bound to "bring the law into accordance with present day standards of wisdom and justice rather than with some outworn and antiquated rule of the past," including when "traditional common-law rules of negligence result in injustice." (*Id.* at 355 [internal quotation and citation omitted]).

The Court of Appeals has made clear that it is the role and duty of courts to update archaic common law, which requires shedding ancient rules that fail to accord with justice:

> The continued vitality of a rule of law should depend heavily upon its continuing practicality and the demands of justice, rather than upon its mere tradition. . . . "If, instead, adherence to precedent offers not justice but unfairness, not certainty but doubt and confusion, it loses its right to survive, and no principle constrains us to follow it" (*Bing v. Thunig*, 2 N.Y.2d 656, 667, 163 N.Y.S.2d 3, 143 N.E.2d 3).

(*Buckley v. City of New York*, 56 NY2d 300, 305 [1982]; *see Woods*, 303 NY at 355 ["When these ghosts of the past stand in the path of justice clanking their mediæval chains the proper course for the judge is to pass through them undeterred."] [cleaned up]; *Millington v. Southeastern El. Co.*, 22 NY2d 498, 509 [1968] [Abiding by the principle that the common law is not an anachronism, the Court terminated "an unjust discrimination under New York law"]).

These foundational principles fly in the face of Amici's unsupported assertion that "[l]egally, there is no basis for creating the emotion-based liability sought here" (Amici Br. 5), which is based on the erroneous view that archaic common law rules are controlling even when their application results in injustice. They are not.

1. Contrary to Amici, traditional tort principles support including the family dog within one's "immediate family."

Amici claim "[t]raditional tort law principles" align against including the family dog within one's "immediate family" for purposes of the zone of danger rule (Amici Br. 6), but this is untrue. Those principles support updating the common law in this case. (*See generally* NhRP's Br. 16-17). Notably, Amici do not discuss or

apply traditional tort principles, confusing them with archaic rules that lack grounding in any rational principle.

The Court of Appeals has affirmed the "fundamental" tort principle "that one may seek redress for every substantial wrong," which means "'a wrong-doer is responsible for the natural and proximate consequences of his misconduct.'" (*Battalla v. State*, 10 NY2d 237, 240 [1961] [citation omitted]). Compensatory damages are thus "intended to have the wrongdoer make the victim whole—to assure that the victim receive[s] fair and just compensation commensurate with the injury sustained." (*Ross v. Louise Wise Services, Inc.*, 8 NY3d 478, 489 [2007]). Moreover, tort law recognizes "the interest of persons in the protection of essentially emotional interests." (*Millington*, 22 NY2d at 507; *see Ferrara v. Galluchio*, 5 NY2d at 21 [1958] ["Freedom from mental disturbance is now a protected interest in this State."].

Accordingly, it would *fail* to accord with traditional tort principles to deny a zone of danger plaintiff like Plaintiff Nan Deblase—who witnessed the tragic death of Duke, her beloved nonhuman family member—the ability to recover emotional distress damages for her emotional injuries. Having suffered a substantial wrong, denying Plaintiff the right to be made whole, the right to receive fair and just compensation, would be contrary to those principles—as well as repugnant to "common-sense justice." (*Battalla*, 10 NY2d at 239). Dogs have become cherished

family members in multispecies households: they are treated like children, siblings, and grandchildren, and thus share deep emotional, familial bonds with humans. (*See generally* NhRP's Br. 10-16). When those bonds are negligently severed, resulting in devastating emotional injuries, recovery for emotional distress damages is just and appropriate.[4]

Including the family dog within the zone of danger rule would also serve to "dignify the deep emotional connection between humans and their pets and underscores a widely shared belief in modern society that animals are not chattel, but members of the family." (*Anne Arundel County v. Reeves*, 252 A.3d 921, 945 [Md. 2021] [Hotten, J., dissenting]). "The law should reflect the importance and centrality of pets to individual families and society as a whole." (*Id*; *see also Nonhuman Rights Project, Inc. v. Breheny*, 38 NY3d 555, 606 [2022] (Wilson, J., dissenting) ["domesticated pets have become important members of families"]; *Travis v. Murray*, 42 Misc 3d 447, 451 [Sup Ct 2013] [a dog is "now seen as an actual member of that family, vying for importance alongside children"]).

[4] "[D]enying noneconomic damages arbitrarily abridges the important principle that a victim should be compensated for all foreseeable injuries tortiously caused in the absence of a rational and sufficiently weighty countervailing public policy." (STEVEN M. WISE, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of A Companion Animal*, 4 Animal L 33, 36 [1998]).

Amici claim "pets do not reap benefits" from emotion-based damages awards (Amici Br. 4), but this is not true. Such awards serve important deterrent purposes—such as disincentivizing unsafe driving, which will benefit dogs (and humans) by preventing them from being wrongfully killed. (*See McDougald v. Garber*, 73 NY2d 246, 254 [1989] ["placing the burden of compensation on the negligent party also serves as a deterrent"]; *see also Greene v. Esplanade Venture Partnership*, 36 NY3d 513, 527 [2021] [Rivera, J., concurring] [noting the "dual purposes of tort law, which are to make wrongfully injured parties whole and provide a sufficient economic disincentive for injurious negligent conduct"]).

Amici suggest economic damages are able to "fully and fairly" compensate for the loss of companion animals who are negligently injured or killed. (Amici Br. 4). This argument is not just wrong, but perversely wrong. A nationwide survey conducted by Amicus AVMA found that at the end of 2016, "[a] large percentage (85%) of dog owners considered their dogs to be family members, while 13.5% considered them to be companions," and "[o]nly 1.4% considered their dogs to be property." (AVMA PET OWNERSHIP AND DEMOGRAPHICS SOURCEBOOK, p. 32 [2017-2018 ed.], https://bit.ly/4eDy6DN). Accordingly, as Amici very well know, the bond of love between dogs and their human family is inarguably *noneconomic*, inarguably

based on deep emotional connections. Economic damages cannot—by definition—"fully and fairly" compensate for the negligent severance of that bond.[5]

Amici's argument to the contrary assumes dogs are mere property, akin to inanimate objects, even though such designation "belies common experience, cultural values, and societal expectations," (*Reeves*, 252 A.3d at 943 [Hotten, J., dissenting]), and is contrary to the recognition that companion animals are a "special category of property," "treated differently from other forms of property." (*Feger v. Warwick Animal Shelter*, 59 AD3d 68, 72 [2d Dept 2008]). Beyond question, "[l]osing a beloved pet is not the same as losing an inanimate object, however cherished it may be. Even an heirloom of great sentimental value, if lost, does not constitute a loss comparable to that of a living being." (*Bueckner v. Hamel*, 886 SW2d 368, 378 [Tex App 1994] [Andell, J., concurring]).

Because "[s]ociety has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, *mere* property," (*id.*), so should courts. The vigorous dissent from Judge Starcher of the West Virginia Supreme Court demonstrates why perpetuating the common law's categorization of dogs as mere property, despite prevailing societal sentiments, is no longer tenable:

[5] Amicus APPA's President and CEO recently acknowledged, "The enduring emotional connection between humans and their pets remains deep." (PR Newswire, *The American Pet Products Association (APPA) Releases 2024 Dog and Cat Owner Insight Report* [Aug. 6, 2014], https://bit.ly/4eB98oq).

> This opinion is simply medieval. The majority blithely says that "our law categorizes dogs as personal property"—that "damages for sentimental value, mental suffering, and emotional distress are not recoverable" when one's pet is injured or killed by the negligence of another person. In coming to this conclusion, the majority overlooks the fact that the "law" in question is the common law which is controlled by this Court. There was nothing stopping the majority from changing that common law other than their lack of concern for pet owners and the emotional bonds that exist between owners and their pets.

(*Carbasho v. Musulin*, 618 S.E.2d 368, 372 [W. Va. 2005] [Starcher, J., dissenting]; *see Reeves*, 252 A.3d at 945 [Hotten, J., dissenting] ["The designation of pets under the common law as mere personal property deprives pets the dignity of living beings."].

No rational principle prevents this Court from evolving New York common law, and traditional tort principles compel this Court to do so.

2. Contrary to Amici, prior New York cases do not preclude this Court from recognizing dogs as part of one's "immediate family."

Amici cite eight cases for the assertion that "New York courts have broadly rejected claims for emotional distress for harm to pets" (Amici Br. 7-8), and based on those cases, they claim "there is no room under New York law to recognize a pet as an immediate family member in this case." (*Id*. at 9). However, contrary to Amici, those cases are not binding on this Court because (i) seven of them are distinguishable, and (ii) more fundamentally, those cases are archaic decisions in

conflict with traditional tort principles and *Greene v. Esplanade Venture Partnership*, 36 NY3d 513 [2021].

i. All but one of Amici's cited New York cases are distinguishable as they do not concern zone of danger scenarios.

A case is "precedent only as to those questions presented, considered and squarely decided." (*People v. Bourne*, 139 AD2d 210, 216 [1st Dept 1988]). Stare decisis does not extend "to cases fairly and reasonably distinguishable." (*Vilas v. Plattsburgh & M.R. Co.*, 123 NY 440, 457 [1890]).

Except for *Johnson v. Douglas*, (187 Misc 2d 509 [Sup Ct 2001]) (and the subsequent decision on appeal), Amici's cited cases are distinguishable since they do not involve zone of danger scenarios: that is, scenarios where the wrongful conduct that causes the animal death also threatens the bystander plaintiff with bodily harm.[6] (*See Kyprianides v. Warwick Val. Humane Soc.*, 59 AD3d 600, 601 [2d Dept 2009] [defendant euthanized nonhuman animals in plaintiff's possession]; *Feger v. Warwick Animal Shelter*, 29 AD3d 515, 516 [2d Dept 2006] [shelter allegedly knowingly accepted a stolen cat for adoption]; *DeJoy v. Niagara Mohawk Power Corp.*, 13 AD3d 1108, 1109 [4th Dept 2004] [horses electrocuted when wires "fell onto a fence around the property where the horses were kept"]; *Jason v. Parks*,

[6] The zone of danger rule "allows one who is . . . *threatened with bodily harm* in consequence of the defendant's negligence to recover for emotional distress flowing only from the viewing [of] the death or serious physical injury of a member of his or her immediate family." (*Greene*, 36 NY3d at 522 [cleaned up] [emphasis added]).

224 AD2d 494 [2d Dept 1996] [veterinary malpractice action]; *Gluckman v. Am. Airlines, Inc.*, 844 F Supp 151 [SDNY 1994] [airline failed to safely transport dog]; *Fowler v. Town of Ticonderoga*, 131 AD2d 919, 921 [3d Dept 1987] ["although plaintiff may have observed the killing of his dog, he was not in the zone of danger"]; *Schrage v. Hatzlacha Cab Corp.*, 13 AD3d 150 [1st Dept 2004] [car struck and killed plaintiffs' dog, but at the time of the accident, the dog was being walked by a dog walker]).[7]

ii. Amici's cited New York cases are archaic decisions in conflict with traditional tort principles and *Greene v. Esplanade Venture Partnership*.

Although *Johnson v. Douglas* does involve a zone of danger scenario, this Court is not bound by this archaic decision under stare decisis—or by the aforementioned New York cases concerning companion animals (to the extent they're not distinguishable). In *Johnson*, a family dog was crushed by a car when the plaintiffs were walking him and their two other dogs. (187 Misc 2d at 509-10). The trial court dismissed five of the plaintiffs' claims, including the two causes of actions based on zone of danger. The Second Department affirmed the dismissal of those claims on appeal, stating in conclusory fashion: "It is well established that a pet owner in New York cannot recover damages for emotional distress caused by the

[7] *Schrage* does not indicate who was walking the dog at the time of the accident, but that information is contained in paragraph 5 of the Verified Complaint.

negligent killing of a dog." (*Johnson v. Douglas*, 289 AD2d 202 [2d Dept 2001] [citing cases]).

Significantly, like almost every other legal rule, the doctrine of stare decisis is not without exceptions. Stare decisis "does not spring full- grown from a 'precedent' but from precedents which reflect principle and doctrine rationally evolved." (*People v. Hobson*, 39 NY2d 479, 488 [1976] [citation omitted]). This is because "'reason and the power to advance justice must always be [the law's] chief essentials.'" (*Id*. [citation omitted]). Stare decisis is "not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Id*. at 487.

It is well-settled that stare decisis "does not apply to a case . . . where the former determination is evidently contrary to reason." (*Rumsey v. New York & N.E.R. Co.*, 133 NY 79, 85 [1892]; *accord Matter of Eckart's Estate*, 39 NY2d 493, 499 [1976]). A precedent is also "less binding if it is little more than an ipse dixit, a conclusory assertion of result, perhaps supported by no more than generalized platitudes." (*Hobson*, 39 NY2d. at 490 [By contrast, "a precedent is entitled to initial respect . . . if it is the result of a reasoned and painstaking analysis."]). In personal injury cases, "courts will, if necessary, more readily re-examine established precedent to achieve the ends of justice in a more modern context," and reject

established precedent when it is "out of step with the times and the reasonable expectations of members of society." (*Id.* at 489). Courts deciding whether to adhere to a prior decision should thus consider the "justifiable rejection of archaic and obsolete doctrine which has lost its touch with reality," (*id*. at 488), as well as "aberrational departures from precedents and accepted principles." (*Id*. at 489).[8]

Based on the foregoing principles, stare decisis does not apply to *Johnson* and the other archaic New York decisions cited by Amici because they are evidently contrary to reason, supported by conclusory assertions that perpetuate injustice, and are out of step with modern times and irreconcilable with reality. In short, they do not reflect principle and doctrine rationally evolved, but constitute aberrational departures from precedents and accepted principles. They are based on the obsolete doctrine that companion animals are mere property, which itself is based on the wholly unscientific and obsolete view that nonhuman animals are insentient, unfeeling machines.

[8] (*See also People v. Peque*, 22 NY3d 168, 194 [2013] [compelling justification for overruling a case may arise where "'a preexisting rule, once thought defensible, no longer serves the ends of justice or withstands the cold light of logic and experience'"] [citation omitted]; *Caceci v. Di Canio Const. Corp.*, 72 NY2d 52, 60 [1988] ("If judges have wo[e]fully misinterpreted the *mores* of their day, or if the *mores* of their day are no longer those of ours, they ought not to tie, in helpless submission, the hands of their successors.") [quoting CARDOZO, NATURE OF JUDICIAL PROCESS 152 [1921]).

Adhering to *Johnson* and the other decisions would therefore conflict with traditional tort principles by disallowing just compensation for injurious negligent conduct, and thereby collide with intrinsically sounder doctrine. "[N]othing specific in New York principle, policy, or precedent justifies contradicting the overarching principle of full compensation for wrongfully caused injuries." (WISE, *supra* note 4, at 86). "There are only judges saying it again and again." *Id*.

Additionally, adherence to those cases would conflict with *Greene v. Esplanade Venture Partnership*, which not only opened the door to further evolutions on zone of danger jurisprudence,[9] but held that when considering roles and perspectives pertaining to family structures, "[w]hat once was accepted as a basic social premise must be carefully examined in a way that reflects the realities of both our changing legal landscape and our lives." (36 NY3d at 524-25). Refusing to recognize the family dog as "immediate family" no longer reflects those realities (if it ever did). Notably, *Johnson* and the other decisions were decided before societal

[9] *Greene* explicitly left unsettled the outer limits of the phrase "immediate family." (36 NY3d at 516; *see also id*. at 535 [Rivera, J., concurring] [*Greene*'s inclusion of grandparents and grandchildren within the definition of "immediate family" for purposes of the zone of danger rule "removes any rational ground for excluding other close bonds that are functional equivalents"]).

norms regarding companion animals dramatically changed in recent years, especially as reflected in the legal landscape.[10]

3. Contrary to Amici, courts in other states have allowed emotional distress damages for the death of companion animals.

Amici assert that "[n]o state in the country allows for the type of liability sought in this case" (Amici Br. 10), and they repeat the assertion with the statement, "no state allows for this type of liability at all." (*Id*. at 15). Amici also claim that "regardless of the court, legal theories asserted or circumstances in which the claims arose, courts have consistently rejected expanding the law to create new liability based on the emotional relationship between an owner and a beloved pet. . . . [E]motional injuries arising out of relational attachments . . . are not compensable." (*Id*. at 10). These claims are all false, as even demonstrated by Amici's misleading "50-state survey."

Louisiana

In *Barrios v. Safeway Ins. Co.*, (97 So 3d 1019 [La Ct App 2012]), the court upheld a $10,000 award for mental anguish brought by two dog owners whose dog Yellow was killed in a pedestrian-motorist accident. Yellow had been struck while

[10] The Second Department recognized in 2008 that "[t]he reach of our laws has been extended to animals in areas which were once reserved only for people." (*See Feger*, 59 AD3d at 72; *see generally* NhRP's Br. 10-16 [describing how societal norms regarding the family dog have evolved, including as reflected in New York legislation passed in 2021]).

he was being walked by the plaintiffs' son. (*Id*. at 1020). In Louisiana, an award for mental anguish resulting from property damage is permissible "when the owner is present or nearby and suffers psychic trauma as a result." (*Id*. at 1022). The plaintiffs did not witness the accident, but they "were nearby and they immediately arrived at the accident scene to find their beloved dog deceased," and "suffered a severe loss and severe emotional distress as a result of the loss of their pet." (*Id*. at 1023).

Emphasizing that Yellow was an integral member of the plaintiffs' family, the trial court gave the following reasons for its judgment:

> The plaintiffs testified that they both have suffered severe emotional distress as a result of the loss of their beloved pet[.] Ellen Barrios stated that Yellow was part of the family and that they are still grieving. Austin Barrios stated that he spent a lot of time with the dog as a member of the family and that he was still grieving over the loss of Yellow. The car accident that resulted in Yellow's death was on Yellow's birthday, a day that the family celebrated with a cook-out and a cake. Yellow was viewed by its owners as more than property, but as a member of the family.

(*Id*.).

In affirming the trial court's award of damages ($5,000 to each plaintiff), the appellate court noted that "pets are not inanimate objects," despite being considered "corporeal movable property," and took "judicial notice of the emotional bond that exists between some pets and their owners and the 'family' status awarded some pets by their owners." (*Id*. at 1023-24).

Connecticut

Trial courts in two unreported cases have allowed bystander emotional distress claims involving dogs killed in car accidents, (*Vaneck v. Drew*, MMXCV085003942S, 2009 WL 1333918, at *5 [Conn Super Ct Apr. 20, 2009]; *Field v. Astro Logistics, LLC*, MMX-CV22-6033510-S, 2022 WL 2380560, at *3 [Conn Super Ct June 30, 2022]); and in a third unreported case, a trial court held that such claims could proceed if the allegations were sufficiently pled. (*Gordon v. Minck*, DBD-CV-23-6045424-S, 2023 WL 8055855, at *3 [Conn Super Ct Nov. 13, 2023]).[11] Notably, Connecticut bystander claims—unlike in New York—do not require the bystander to be within the zone of danger.

In *Vaneck*, the plaintiff alleged he observed a car strike his dog Shadow, resulting in the latter's death, and asserted two bystander claims on that basis (one sounding in negligence, the other in intentional misconduct). The defendant argued those claims were barred under *Myers v. City of Hartford*, 853 A.2d 621 [Conn App Ct 2004], also cited by Amici (Amici Br. 11), which had stated "there is no common-law authority in this state that allows plaintiffs to recover noneconomic damages resulting from a defendant's alleged negligent or intentional act resulting in the death of a pet." (853 A.2d at 626). However, the *Vaneck* court explained that *Myers* "did

[11] A copy of each of these decisions is appended to this brief pursuant to Section 11, Part II Subpart A, of this Court's rules.

not expressly foreclose a claim of severe emotional distress suffered by a bystanding owner who witnesses the fatal injury to a pet," distinguishing bystander and non-bystander claims. (2009 WL 1333918 at *3).

The court also rejected the argument that a dog is "merely personal property." (*Id*. at *2). It observed that while dogs are considered property, "*this term inadequately and inaccurately describes the relationship between an individual and his or her pet*." (*Id*. at *3 [quoting *Myers*, 853 A.2d at 626] [emphasis added by the court]). Significantly, through legislation passed after *Myers*, empowering judges to issue family protective orders intended to protect pets in domestic violence cases (codified at General Statutes § 46b-15(b)),[12] "the legislature has also acknowledged that a household pet such as Shadow holds [] a distinct, identifiable and legally protected place within the human family unit." (*Id*. at *4). "Viewed in the light of this modern legislation," the plaintiff's negligence claim could not be deemed insufficient "merely because it alleges the plaintiff's bystander emotional distress for the injury and death of a pet instead of a human being," and neither could his intentional infliction of emotional distress claim. (*Id*. at *5).

In allowing the plaintiff's bystander claims, the *Vaneck* court determined that those claims could be asserted under the framework enunciated in *Clohessy v.*

[12] (*Compare Feger,* 59 AD3d at 72 ["Companion animals may now be included as protected parties when orders of protection are issued in domestic disputes (*see* Family Ct Act § 842)"]).

Bachelor, (675 A.2d 852 [Conn 1996]), which held that a bystander may recover emotional distress damages if the following conditions are satisfied:

> (1) he or she is closely related to the injury victim, *such as* the parent or the sibling of the victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim's condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical injury; and (4) the bystander's emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response.

(2009 WL 1333918 at *4 [quoting 675 A.2d at 865]). Notably, *Clohessy*'s "closely related" element parallels *Greene*'s "immediate family" requirement.

As in *Vaneck*, *Field* and *Gordon* also involved bystander claims based on witnessing dogs killed in car accidents. The *Field* court examined the "closely related" element, concluding that based on several factors to determine whether a bystander is closely related to the injury victim, "the plaintiffs' claims for bystander emotional distress based on a relationship to the dog may be met," and that "[i]n the absence of any limit imposed by our appellate courts, this court will not impose a limit in the law that does not otherwise exist." (2022 WL 2380560 at *3).

The *Gordon* court, on the other hand, dismissed the plaintiff's bystander claim since it did not satisfy the "closely related" element, but concluded that similar claims *could* be brought if they were sufficiently pled: "In the final analysis, this court concludes that the principles underlying the Supreme Court's recognition in

Clohessy of the bystander emotional distress duty may, upon a sufficiently plead allegation, state a claim for the serious emotional damages plaintiff allegedly suffered as a result of witnessing the killing of his pet as a result of defendant's alleged negligence." (2023 WL 8055855 at *3).

Hawaii

In 1970, the Hawaii Supreme Court in *Rodrigues v. State*, (472 P.2d 509, 520 [1970]) allowed recovery for serious mental distress resulting from the negligent destruction of property, specifically damages to a house. Over 10 years later, the Court applied *Rodrigues* in *Campbell v. Animal Quarantine Station*, (632 P.2d 1066 [1981]) to emotional distress claims involving a dog who died during transport to a veterinary hospital. None of the plaintiffs witnessed the dog's death, yet the Court held they were entitled to damages for their mental distress. (*Id*. at 1070).

Amici misleadingly claim this allowance of emotion-based liability for harm to property "was legislatively overturned," citing Haw. Rev. Stat. § 663-8.9. (Amici. Br. 14). The statute, enacted in 1986, only "modified Hawaii's common law tort of NIED." (*Goran Pleho, LLC v. Lacy*, 439 P.3d 176, 190 [2019]). It bars emotional distress claims arising "solely out of damage to property or material objects" (§ 663-8.9(a)), but states the bar shall not apply "if the serious emotional distress or disturbance results in physical injury to or mental illness of the person who experiences the emotional distress or disturbance." (§ 663-8.9(b)). Thus, emotional

distress claims for the loss of nonhuman animals can survive if the emotional distress results in the claimant suffering "physical injury" or "mental illness." (*See Guth v. Freeland*, 28 P.3d 982, 985 [2001] [emotional distress claims based on property damages can survive "where the claimant's emotional distress resulted in physical injury or mental illness"]).

Florida

Amici cite *Kennedy v. Byas*, (867 So 2d 1195 [Fla Dist Ct App 2004]) (Amici Br. 11), which acknowledged "there is a split of authority on whether damages for emotional distress may be collected for the negligent provision of veterinary services." (867 So 2d at 1198).

Knowles Animal Hosp., Inc. v. Wills, (360 So 2d 37, 38 [Fla Dist Ct App 1978]) affirmed a $13,000 jury award for the plaintiffs' physical and mental suffering in their gross negligence action against a veterinary hospital, whose neglect of a dog caused the dog to suffer severe burns, ultimately requiring the dog to be euthanized.

Similarly, in *Johnson v. Wander*, (592 So 2d 1225, 1226 [Fla Dist Ct App 1992]), gross negligence claims were asserted against a veterinarian whose neglect resulted in a dog suffering serious burns. Noting the case was "factually indistinguishable" to *Knowles*, the court held that the trial court improperly transferred the matter to county court after entering summary judgment dismissing the plaintiff's claims for punitive damages and emotional distress. (*Id*.).

California

Amici cite *McMahon v. Craig*, (97 Cal.Rptr.3d 555 [Cal Ct App 2009]) (Amici Br. 11), which did not categorically eliminate emotional distress damages for the loss of nonhuman animals.

Plotnik v. Meihaus, (146 Cal.Rptr.3d 585, 601 [Cal Ct App 2012]) upheld an award of emotional distress damages "recovered for trespass to personal property arising from Meihaus's act of intentionally striking [the dog] Romeo with a bat." "[O]ne can be held liable for punitive damages if he or she willfully or through gross negligence wrongfully injures an animal." (*Id*. at 600; *see Berry v. Frazier*, 307 Cal.Rptr.3d 778, 793 [Cal Ct App 2023] ["It is well settled that 'in a proper case a person's intentional injuring or killing a pet' will support an owner's recovery of damages for IIED."] [citation omitted]).

Alaska

Amici cite *Mitchell v. Heinrichs*, (27 P3d 309 [Alaska 2001]) (Amici Br. 11), even though the Alaska Supreme Court recognized "a cause of action for intentional infliction of emotional distress for the intentional or reckless killing of a pet animal." (27 P3d at 311-12 [citing *Richardson v. Fairbanks N. Star Borough*, 705 P2d 454, 456 [Alaska 1985]).

Idaho

Amici cite *Gill v. Brown*, (107 Idaho 1137 [Idaho Ct App 1985]) (Amici Br. 11), even though the court permitted a claim based on the allegation that the defendant recklessly shot and killed the plaintiffs' donkey: the plaintiffs "have alleged facts that, if proven, could permit recovery under an intentional infliction of emotional distress cause of action." (107 Idaho at 1139).

Washington

Amici cite *Sherman v. Kissinger*, (195 P.3d 539 [Wash Ct App 2008]) (Amici Br. 14), even though the court held that "malicious injury to an animal can support a claim for emotional distress damages." (195 P.3d at 548).

Kentucky

Amici cite *Ammon v. Welty*, (113 SW3d 185 [Ky Ct App 2002]) (Amici Br. 11), even though the court stated, "[s]imply because a claim involves an animal does not preclude a claim for intentional infliction of emotional distress." (113 SW3d at 188).

Burgess v. Taylor, (44 SW3d 806, 809 [Ky Ct App 2001]) affirmed a jury award of $50,000 in compensatory damages and $75,000 in punitive damages in an action for intentional infliction of emotional distress, in which two horses were sold against their owner's wishes and then killed in a slaughterhouse. The court rejected

the argument that the plaintiff could not recover emotional damages because the loss involved nonhuman animals, stating:

> There are no cases in Kentucky holding that a finding of intentional infliction of emotional distress or punitive damages is precluded simply because the facts giving rise to the claim involve an animal. Indeed, we conclude that the second element in application of the tort of the intentional infliction of emotional distress depends on the facts of the case as to the offender's conduct and not to the subject of said conduct.

(*Id*. at 813).

B. Floodgate scenarios do not justify excluding the family dog from one's "immediate family" for purposes of the zone of danger rule.

Floodgate arguments are "often advanced when precedent and analysis are unpersuasive," (*Matter of Johannesen v. New York City Dept. of Hous. Preserv. and Dev.*, 84 NY2d 129, 138 [1994]), and Amici make such arguments here. (Amici Br. 17-21).

Amici claim, without a shred of evidentiary, economic, or scientific support, that emotional damages awards would "conflict with pet welfare," supposedly by causing "the price of all pet services and products to rise in order to pay for those awards." (*Id*. at 17-18). Their stated "primary concern" is that veterinary costs will dramatically increase and make "essential pet care, services and products" unaffordable for many families, (*id*. at 18), thereby leading "directly to the suffering of many pets." (*Id*. at 20). Such unfounded and speculative, sky-is-falling scenarios cannot justify perpetuating the unjust legal status quo.

First, Amici's "primary concern" regarding the affordability of veterinary services lacks any connection to reality. Plaintiff Nan Deblase's cause of action involves a zone of danger scenario, and zone of danger scenarios—where the negligent conduct threatens the bystander plaintiff with bodily harm—do not happen in veterinary offices, or when a companion animal is receiving veterinary care (except, possibly, under extremely unusual circumstances). It is simply not true that "[t]he issues presented in this case directly involve the veterinary profession." (Amici Br. 2).[13]

Amici do not attempt to substantiate their dire predictions of chaos with anything resembling hard data. Amici claim it has been "well-documented" that "pet welfare" weighs heavily "against creating this new liability." (Amici Br. 17). Yet, in support of this assertion, they cite two cases containing no discussion of animal welfare concerns. (*See id*. [citing *Harabes v. Barkery, Inc.*, 791 A.2d 1142 [NJ Super Ct Law Div 2001] and *Myers*, 853 A.2d at 626]). Amici also rely on an opinion piece

[13] The baseless notion that allowing emotional damages awards in veterinary malpractice actions would dramatically increase veterinary costs has been subjected to rigorous scrutiny. (*See generally* CHRISTOPHER GREEN, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 Animal L 163, 218-228 [2004]).

filled with rank speculation unsupported by any citations. (Amici Br. 5, 21 [citing Steve Malanga, *Pet Plaintiffs*, Wall St. J., May 9, 2007]).[14]

Another stated concern is that "[c]ar insurance rates would rise because of risks associated with pets running into roads and riding in cars." (Amici Br. 21). However, in *Greene*, where a grandchild was killed by falling debris from a building, Judge Jenny Rivera's concurrence refuted a nearly identical argument that attempts to excuse a defendant of the consequences of their negligence:

> Causing defendants like these to internalize the full cost of the harm that they cause, and making those harmed by them whole, promotes the important societal goal of public safety. Second, it encourages potential defendants to acquire appropriate insurance coverage; this, too, promotes public safety, as these individuals and entities will likely undertake risk-reduction measures to avoid hefty insurance premiums. For those concerned that society (renters in the building, for instance) will pay the price for increased insurance, the costs are unlikely to be greater than for any other type of tort recovery that we already permit, and defendant can contain increased insurance costs by taking the legally prescribed steps to reduce the likelihood that their buildings crumble and kill passersby.

(36 NY3d at 547-48 [Rivera, J., concurring]).

Second, Amici wrongly assume that in order to include the family dog within one's "immediate family," this Court must determine all the nonhuman animals who

[14] Additionally, Amici misrepresent *McMahon* as stating that allowing emotional distress damages for veterinary malpractice would have "adverse consequences on 'the cost and availability of veterinary care,'" (Amici Br. 18 [quoting 97 Cal. Rptr. 3d. at 564), when *McMahon* opines that allowing such damages "would have *unknown consequences* on both the cost and availability of veterinary care." (97 Cal. Rptr. 3d. at 564 [emphasis added]).

would qualify, as well as resolve liability issues that may arise in other circumstances. However, this Court need only follow the approach in *Greene* by making an incremental evolution in the common law, leaving consideration of other issues for another day. (*See Greene*, 36 NY3d at 516 ["Once again, we are not asked to fix permanent boundaries of the 'immediate family.' Instead, our task simply is to determine whether a grandchild may come within the limits of her grandparent's 'immediate family,' as that phrase is used in zone of danger jurisprudence."]).

Amici cite the concern expressed in *Rabideau v. City of Racine*, (627 N.W.2d 795 [WI 2001]) (Amici Br. 16), which stated that by permitting recovery for emotional distress damages caused by the negligent killing of a dog, there would be "no sensible or just stopping point," given the "the human capacity to form an emotional bond extends to an enormous array of living creatures." (627 N.W.2d at 802). In other words, the prospect of drawing difficult distinctions in future cases justifies denying recovery in all cases. This is not a rational or just position. "[L]ine drawing is often an inevitable element of the common-law process," but the need to draw difficult distinctions "does not justify our clinging to a line that has proved indefensible." (*Broadnax v. Gonzalez*, 2 NY3d 148, 156 [2004]; *see also Breheny*, 38 NY3d at 622 [Wilson, J., dissenting] ["[C]ommon-law courts are especially good at developing doctrines to deal with slippery slopes. Proximate cause,

reasonableness and foreseeability are among the many doctrines that courts use to stop principles from reaching their logical conclusions."]).

Third, as detailed above, a variety of emotional distress claims involving the death of nonhuman animals have been allowed for decades, yet there is no evidence those claims have adversely impacted the welfare of companion animals or caused a floodgates problem. Bystander emotional distress claims involving dogs killed in car accidents have been allowed in Louisiana and Connecticut; veterinary gross negligence actions to recover emotional distress damages have been allowed in Florida; and intentional infliction of emotional distress claims have been allowed in California, Alaska, Idaho, Washington, and Kentucky.

Particularly instructive is Hawaii. In 1970, the Hawaii Supreme Court in *Rodrigues v. State* permitted recovery for mental distress suffered as a result of the negligent destruction of property. (*Campbell*, 632 P.2d at 1068). 11 years later, when *Rodrigues* was extended to cover emotional distress claims involving nonhuman animals, the high court found "there has been no 'plethora of similar cases'" since the prior decision; "the fears of unlimited liability have not proved true." (*Id.* at 1071). Legislative modification of the common law rule did not occur until 1986—16 years after *Rodriques*—and even then, the legislature did not eliminate recovery.

Fourth, the possibility of increased litigation cannot justify freezing the common law in the archaic past. In *Battalla*, the Court of Appeals abolished the

impact requirement in negligent infliction of emotional distress cases because the outdated rule was "unjust, as well as opposed to experience and logic." (10 NY2d at 239 [overruling prior decision that decided "there could be no recovery for injuries, physical or mental, incurred by fright negligently induced"]). *Battalla* made clear the possibility of "extra litigation" is "no reason for a court to eschew a measure of its jurisdiction." (*Id*. at 241). Thus, this Court's focus should be on the underlying injustice of denying recovery for emotional injuries, not speculative increases in litigation.

Significantly, *Battalla* explained that "even if a flood of litigation were realized by abolition of the [physical impact rule], it is the duty of the courts to willingly accept the opportunity to settle these disputes." (*Id*. at 241-42; *Tobin v. Grossman*, 24 NY2d 609, 615 [1969] ["This court has rejected as a ground for denying a cause of action that there will be a proliferation of claims. It suffices that if a cognizable wrong has been committed that there must be a remedy, whatever the burden of the courts."]; *see also Greene*, 36 NY3d at 538 n. 5 [Rivera J, concurring] ["Courts are on shaky justificatory ground to begin with when they shape substantive law to avoid an increase in their workloads."]).[15]

[15] "It is the business of law to remedy wrongs that deserve it, even at the expense of a flood of litigation, and it is a pitiful confession of incompetence on the part of any court of justice to deny relief on such grounds." (*Greene v. Esplanade Venture Partnership*, 172 AD3d 1013, 1033 [2d Dept 2019], revd, 36 NY3d 513 [2021] [Miller, J., dissenting] [cleaned up]).

Relying on the majority decision in *Breheny*, Amici falsely claim "[t]reating pets akin to persons 'would call into question the very premises underlying pet ownership,' and 'have significant implications for the interactions of humans and animals in all facets of life.'" (Amici Br. 9 [quoting 38 NY3d at 573]). *Breheny* concerned the question of whether to recognize an elephant as a legal person for purposes of habeas corpus, and the majority believed the legal system would be upended if it granted "legal personhood to a nonhuman animal" in a manner that would essentially allow all nonhuman animals to sue in court. 38 NY3d at 573. Putting aside the merits of this (terrible) argument,[16] it has no application to this case. This case has nothing to do with treating companion animals as legal persons, either for habeas corpus purposes or any other purpose.[17]

Fifth, should this Court adopt a rule that ultimately proves unworkable, it can be modified by future courts and the legislature. This Court has the inherent flexibility as a common law court to adopt sensible rules that harmonize with justice,

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[16] (*See Breheny*, 38 NY3d at 620 [Wilson, J., dissenting] ["These [floodgate] scenarios are so facially preposterous that they hardly deserve a response; it is also difficult to know which of many possible responses to offer."]).

[17] In the law, a "person" refers to any entity capable of bearing rights or duties. (*See* PERSON, BLACK'S LAW DICTIONARY (12th ed. 2024) ["So far as legal theory is concerned, a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man."] [quoting JOHN SALMOND, JURISPRUDENCE 318 [Glanville L. Williams ed., 10th ed. 1947]).

knowing that, should those rules not work out as hoped or planned, problems can be addressed. What is untenable is embracing an arbitrary, unprincipled rule that fails to accord with experience and perpetuates the unjust legal status quo, thereby adding "further confusion to a legal situation which presently lacks that coherence which precedent should possess." (*Battalla*, 10 NY2d at 239).

CONCLUSION

For the foregoing reasons, Amici's arguments for maintaining the unjust legal status quo are unavailing. NhRP respectfully submits that the family dog should be included within one's "immediate family" for purposes of applying the zone of danger rule.

Pursuant to 22 NYCRR § 130-1.1-a, the undersigned certifies that the contentions contained within this submission are not frivolous.

Pursuant to Section 15, Part II Subpart A, of this Court's rules, the undersigned certifies that no generative artificial intelligence program was used in the drafting of this submission.

This brief contains 7,578 words. Counsel was informed by a clerk of this Court that it does not apply word limitations.

September 30, 2024

Respectfully submitted,

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APPENDIX: COPIES OF UNPUBLISHED CONNECTICUT CASES

(Submitted pursuant to Section 11, Part II Subpart A, of this Court's rules)

1. *Vaneck v. Drew*, MMXCV085003942S, 2009 WL 1333918 [Conn Super Ct Apr. 20, 2009]

2. *Field v. Astro Logistics, LLC*, MMX-CV22-6033510-S, 2022 WL 2380560 [Conn Super Ct June 30, 2022]

3. *Gordon v. Minck*, DBD-CV-23-6045424-S, 2023 WL 8055855 [Conn Super Ct Nov. 13, 2023]

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Brisson v. These Guys New York Deli Corp., Conn.Super., January 20, 2023

2009 WL 1333918
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Middlesex.

Hermann VANECK
v.
Joyce Cosenza-DREW.

No. MMXCV085003942S.
|
April 20, 2009.

Opinion

N. RUBINOW, J.

***1** This memorandum of decision addresses the issues raised though the defendant's Motion to Strike the second though eighth counts of the plaintiff's amended complaint (# 118); her Supporting Memorandum of Law (# 118.25); the plaintiff's Objection to Motion to Strike (# 127); and his supporting memorandum (# 127.75). The issues concern the viability of the plaintiff's claims seeking damages for injuries and losses he allegedly sustained when he saw the defendant struck his pet dog, Shadow, with her motor vehicle, causing Shadow to suffer internal organ damage, a severed spinal column, and death. The court has previously denied the defendant's pending motion to strike the second and fourth counts of the amended complaint. For the following reasons the court now denies the remaining aspects of the motion to strike relating to the third, fifth, sixth, seventh and eighth counts of the amended and revised complaint.

I

CONSTRUCTION OF THE COMPLAINT

The self-represented plaintiff asserted several causes of action in the Amended and Revised Complaint at issue, which was filed on August 21, 2008 (# 116). The first count alleges that the defendant is liable for damage to the plaintiff's personal property, namely, his pet; the second count alleges that the defendant's negligent actions caused his injuries and losses; the third count alleges that the defendant is liable to the plaintiff for negligent infliction of bystander emotional distress; the fourth count alleges the defendant's per se negligence under General Statutes § 14-218a for traveling unreasonably fast; the fifth count alleges the defendant's per se negligence under General Statutes § 14-224(b) for evasion of responsibility in operation of a motor vehicle and § 14-226 for failure to report injury to a dog; the sixth count alleges that the defendant is liable for intentional infliction of emotional distress upon the bystanding plaintiff; the seventh count alleges that the defendant is liable for the violation of General Statutes § 22-351 for the unlawful killing or injuring of an animal companion; and the eighth count again alleges the defendant's per se negligence under § 14-224(b) for evasion of responsibility in operation of a motor vehicle.

The court has adhered to the applicable principles of law in resolving the issues related to the motion to strike. "The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). It is axiomatic that in ruling on a motion to strike, "[t]he role of the trial court [is] to examine the [complaint], construed in favor of the [plaintiff], to determine whether the [plaintiff has] stated a legally sufficient cause of action." (Internal quotation marks omitted.) *Dodd v. Middlesex Mutual Assurance Co.*, 242 Conn. 375, 378, 698 A.2d 859 (1997). In weighing the merits of the motion to strike, the court must "construe the complaint in the manner most favorable to sustaining its legal sufficiency." (Internal quotation marks omitted.) *Sullivan v. Lake Compounce Theme Park, Inc.*, 277 Conn. 113, 117, 889 A.2d 810 (2006); see also *Connecticut National Bank v. Douglas*, 221 Conn. 530, 536, 606 A.2d 684 (1992). "If facts provable in the complaint would support a cause of action, the motion to strike must be denied." (Internal quotation marks omitted.) *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 294, 914 A.2d 996 (2007). "Moreover ... [w]hat is necessarily implied [in an allegation] need not be expressly alleged ... It is fundamental that in determining the sufficiency of a complaint challenged by a defendant's motion to strike, all well-pleaded facts and those facts necessarily implied from the allegations are taken as admitted ... Indeed, pleadings must be construed broadly and realistically, rather

than narrowly and technically." (Internal quotation marks omitted.) *Violano v. Fernandez,* 280 Conn. 310, 318, 907 A.2d 1188 (2006). "Where the legal grounds for ... a motion [to strike] are dependent upon underlying facts not alleged in the plaintiff's pleadings, the defendant must await the evidence which may be adduced at trial, and the motion should be denied." [1] (Internal quotation marks omitted.) *Commissioner of Labor v. C.J.M. Services, Inc.,* 268 Conn. 283, 293, 842 A.2d 1124 (2004).

II

MOTION TO STRIKE THE THIRD COUNT

***2** As noted, the third count of the amended complaint, fairly read, sounds generally in negligent infliction of bystander emotional distress. The defendant argues that this claims presented in the third count are legally insufficient because "[u]nder Connecticut law, plaintiff cannot recover for a claim of emotional distress due to the injury to personal property, i.e. his pet dog." (# 118.25.) The defendant cites *Myers v. Hartford,* 84 Conn.App. 395, 402, [853 A.2d 621] cert. denied, 271 Conn. 927 [, 859 A.2d 582] (2004) as her basis for moving to strike this count, submitting that case for the proposition that "[i]n Connecticut, 'common law has never recognized a right to sue an individual for intentional or negligent infliction of emotional distress resulting from injury to such property as a pet.' " (118.25.) The court declines to adopt the defendant's proposed narrow application of *Myers* and, accordingly, finds this issue in favor of the plaintiff.

Construing the amended and revised complaint in the manner most favorable to sustaining its legal sufficiency, pursuant to the standards described in Part II, the court concludes that the third count alleges the essential facts requisite to the plaintiff's claim that, as a bystander to the motor vehicle incident at issue, he suffered emotional distress for which the trier of fact may find the defendant to be legally liable. The third count asserts: that the plaintiff and the defendant lived on different ends of two contiguous streets in a residential area of Essex; that the plaintiff observed the defendant traveling in her motor vehicle at an unreasonable rate of speed down the street toward his house; that he observed the defendant swerve to avoid a child walking another dog on the street; he observed her motor vehicle strike his dog; that the impact of the defendant's vehicle with his dog caused a loud thud which was heard by the plaintiff; that the impact propelled the plaintiff's pet down the roadway; that the plaintiff personally observed the injuries being inflicted upon his pet; that the injury to the plaintiff's pet was substantial, and resulted in the pet's death; and that this experience caused the plaintiff to be in shock, horror, and dismay, suffering serious, or severe, emotional injury.

The third count's claim of negligent infliction of bystander emotional distress is clearly based upon the plaintiff's relationship with his pet dog Shadow, not with a human being. As such, the defendant argues, the third count is barred by the principles set forth in *Myers v. Hartford, supra,* and also because the dog is merely personal property within the meaning of General Statutes § 22-350. [2] The defendant would have the court read *Myers* as prohibiting in all circumstances a plaintiff's right to recovery for infliction of emotional distress resulting from injury to a pet, whether caused by negligent or intentional conduct. This court does not agree, however, that the rule of *Myers* precludes a claim for negligent or intentional infliction of emotional distress suffered by a bystander, as this injury supports a claim which is separate and distinct claim from intentional or negligent infliction of emotional distress that arises from a event or experience that the plaintiff has not observed.

***3** The significance of this distinction is made clear by reviewing the facts of *Myers* and the principles of bystander emotional distress enunciated in *Clohessy v. Bachelor,* 237 Conn. 31, 675 A .2d 852 (1996). In *Myers,* the plaintiff brought a cause of action for negligent and intentional infliction of emotional distress against the city of Hartford alleging that city animal control employees mistakenly euthanized her pet dog. The plaintiff did not allege that she was a witness or bystander to the euthanasia procedure, nor that she was in the immediate vicinity of the event when it occurred. She appealed after the trial court had granted a directed verdict, upon "ruling that the defendants were protected by qualified municipal immunity." *Myers v. Hartford, supra,* 84 Conn.App. at 397. The Appellate Court concluded that the plaintiff's claim had to fail on other grounds. *Id.,* at 398. Among other things, *Myers* determined that "by pleading only claims for intentional and negligent infliction of emotional distress, the plaintiff has not set forth a colorable common-law claim against the defendant employees, and the municipality cannot be held liable for indemnification." *Id.,* at 402.

Factually, then, *Myers* did not present a claim that the plaintiff had witnessed the circumstances or events that

caused her pet's death; the plaintiff had not alleged that she was a bystander to the euthanasia. Denying the plaintiff's appeal under these specific factual circumstances and in the context of her governmental liability claims, the *Myers* court further observed that Connecticut's "common law has never recognized a right to sue an individual for intentional or negligent infliction of emotional distress resulting from injury to such property as a pet." *Id.* Relevant to other factual scenarios, such as the present case, however, the *Myers* opinion further reminded us that "claims for infliction of emotional distress are unavailable [in many close relationships] ... *except when the bereaved is a bystander.*" (Emphasis added.) *Id.,* at 403. In addition, citing *Clohessy v. Bachelor, supra,* 237 Conn. at 50, the Appellate Court limited its ruling by stating that "*when the plaintiff has not witnessed the fatal injury,* it would be incongruous to extend [recovery] to emotional distress resulting to a person from the loss of a pet." *Myers v. Hartford, supra,* 84 Conn.App. at 403.

Notwithstanding the conclusion required by the pleadings and posture of that case on appeal, the *Myers* court expressly acknowledged the status of the emotional relationship a person may have with his or her pet. The Appellate Court stated that "[l]abeling a pet as property fails to describe the emotional value human beings place on companionship that they enjoy with such an animal. Although dogs are considered property; see General Statutes § 22-350; *this term inadequately and inaccurately describes the relationship between an individual and his or her pet.*" (Emphasis added.) *Myers v. Hartford, supra,* 84 Conn.App. at 402. While precluding a general cause of action for intentional or negligent infliction of emotional distress by a municipal agent due to an unwitnessed death of a pet, the Appellate Court clearly recognizes the intrinsic value of the emotional attachment between a pet-owner and his or her living, breathing animal. Thus, *Myers* did not expressly foreclose a claim of severe emotional distress suffered by a bystanding owner who witnesses the fatal injury to a pet.

***4** In the third count of the complaint under consideration, the plaintiff has alleged not only negligent infliction of emotional distress but also that he incurred the distress as a bystander who had observed the incident in question. Accordingly, the court has considered the implications of *Clohessy v. Bachelor, supra,* to determine the sufficiency of relevant bystander emotional distress claims. In *Clohessy,* the Supreme Court opinion explained: "[A] *bystander* may recover damages for emotional distress under the rule of reasonable foreseeability if the bystander satisfies the following conditions: (1) he or she is closely related to the injury victim, *such as* the parent or the sibling of the victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim's condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical injury; and (4) the bystander's emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response." (Emphasis added.) *Id.,* at 56.

In the present matter, although the plaintiff makes no claim that his Shadow was his "parent or sibling" insofar as the first *Clohessy* element is concerned, the complaint impels the inference that he had a close relationship with his pet. In reaching this conclusion, the court has acknowledged that it is useful to consider the Supreme Court's explanation of this element insofar as bystander emotional distress is concerned: "The class of potential plaintiffs should be limited to those who because of their relationship suffer the greatest emotional distress ... We leave to another day the question of what other relationships may qualify." (Internal quotation marks omitted.) *Id.,* at 52. Fulfilling the remainder of the *Clohessy* bystander emotional distress elements, Paragraph 13 of the third count expressly claims that the plaintiff "was a bystander to the events and circumstances" that led to the dog's death. Paragraph 15 of this count additionally alleges, in part, that "[t]he Plaintiff saw Defendant hurtling down the street at an unreasonable speed, saw the defendant come upon the section of street before his house, swerve to avoid a child walking another dog upon the street, and strike Plaintiff's dog, the pet Companion animal SHADOW." (Emphasis in the original.)

Thus far, our state has not published any appellate authority or legislation prohibiting a litigant's pursuit of a claim for bystander emotional distress which may be suffered by a human being who witnesses the death or injury of a pet, such as Shadow, with whom he or she has a close relationship. On the other hand, in 2007, subsequent to the publication *Myers v. Hartford,* our legislature took action which expressly emblematized the intrinsic value of "the relationship between an individual and his or her pet" and the role such pets may play within our contemporary family units. *Myers v. Hartford, supra,* 84 Conn.App. at 402-03. Through the "Act Concerning the Protection of Pets in Domestic Violence Cases," the legislature explicitly empowered judges of the Superior Court

to issue family protective orders with provisions "necessary to protect *any animal owned or kept by the victim* including, but not limited to, an order enjoining the defendant from injuring or threatening to injure such animal." (Emphasis added.) Public Acts 2007, No. 07-78, § 1, now codified at General Statutes § 46b-15(b). The only other family relationship for which judges are explicitly empowered to provide protection pursuant to this statute, other than "any animal owned or kept by the applicant" is that of the applicant's dependent children, although relief under § 46b-15(b) may be extended to "other persons as the court sees fit." *Id.* Thus, while our statutory scheme still classifies domestic dogs, such as Shadow, as property, within the meaning of § 22-350, the legislature has clearly recognized, as did the Appellate court in *Myers,* that "this term inadequately and inaccurately describes person's emotional attachment to ... a household pet."[3] *Myers v. Hartford, supra,* at 84 Conn.App. 402-03. Accordingly, the legislature has also acknowledged that a household pet such as Shadow holds with a distinct, identifiable and legally protected place within the human family unit.

***5** Viewed in the light of this modern legislation, the third count, as pleaded cannot be deemed to have presented an insufficient cause of action merely because it alleges the plaintiff's bystander emotional distress for the injury and death of a pet instead of a human being.[4] Through § 46b-15(b), our state has effectively ratified the *Myers* language acknowledging that a pet owner places a great deal of emotional attachment on his relationship with his family pet. Therefore, the pet owner holds the status of a foreseeable victim of bystander emotional distress. In the absence of specific authority denying the plaintiff the opportunity to pursue a claim for negligent infliction of bystander emotional distress due to the loss of his legislatively-sanctioned relationship with Shadow, the defendant's motion to strike count three must be denied.

III

MOTION TO STRIKE THE SIXTH COUNT

The defendant has moved to strike the sixth count of the amended and revised complaint for the same reasons stated in opposition to the third count. (# 118.25.) Finding the rule of *Myers v. Hartford* to be inapposite due to factual distinctions, as described in Part II, the court finds this issue in favor of the plaintiff, who has, at least in part, based his allegations upon his status as a bystander to the incident.[5]

The sixth count reasserts the allegations of the third count which sound in bystander emotional distress suffered by the plaintiff upon witnessing the death of his dog. Paragraph 29 of the sixth count summarily asserts that the defendant is liable to the plaintiff for "intentional infliction of emotional distress ostensibly in the context of the plaintiff's presence at the time of the occurrence, and his observation of the fatal injuries sustained by his pet. Numerous paragraphs of the sixth count assert the following additional facts as being representative of consciously undertaken, intentional conduct on the part of the defendant: there were two traffic control signals, one marked "Slow-Children" and the second marked "Speed Limit-25" affixed to a post three houses before the plaintiff's house; the defendant operated her motor vehicle in excess of forty-five miles per hour in this area; the defendant knew that children and dogs were generally to be found on the roadway, which had no sidewalks; at the point where the plaintiff's pet dog was struck, a pedestrian walking another dog was on the immediate roadway; despite this knowledge the defendant operated her motor vehicle at an excessive rate of speed, without keeping a proper lookout for children, dogs, and possible danger. Construing these allegations of the self-represented litigant's complaint in the most favorable light to sustaining its legal sufficiency, the foregoing paragraphs may be read as presenting a cause of action sounding in bystander emotional distress based on what may be characterized as the conscious misconduct or intentional malfeasance of the defendant, leading to the fatal injury of the dog, Shadow, while the plaintiff was a bystander to the incident.

***6** In part, the remainder of the sixth count incorporates allegations of the second count which sound in negligence; of the third count which sounds in negligent infliction of bystander emotional distress; and of the fourth and fifth counts which sound in statutory and general negligence. Separately, however, in Paragraph 28 of the sixth count, the plaintiff offers other grounds upon which he would have the defendant found liable. He states: "in the alternative, the defendant: (a) knew or should have known that emotional distress was a likely result for her conduct; (b) the conduct as described was extreme and outrageous; (c) the defendant's conduct was the proximate cause of the plaintiff's distress; (d) the emotional distress suffered by the plaintiff was severe." These assertions appear to promote the bare elements of a claim for the intentional infliction of emotional distress as contemplated by *Tracy v. New Milford Public Schools,* 101

Conn.App. 560, 568, 992 A.2d 280 cert. denied, 284 Conn. 910, 931 A.2d 935 (2007). Construing the complaint in the light most favorable to sustaining its legal sufficiency, as it is required to do at this stage of the proceedings, the court is constrained to conclude that the plaintiff has raised two separate causes of action in the sixth count.

Thus, Paragraph 28 of the sixth count sets forth bare allegations of intentional infliction of emotional distress for harm done to a pet under circumstances without express assertion of the plaintiff's bystander status. The court agrees with the defendant that *Myers v.. Hartford, supra,* bars a claim for intentional infliction of emotional distress resulting from the death of a pet, except where the plaintiff is a bystander. This bar to the alternative allegations of Paragraph 28 in the sixth count, however, does not give the court license to strike the entire count. As has been cogently expressed by other trial courts, "Practice Book [§ 10-39] authorizes the striking of a whole complaint or a count thereof ... [but] does not authorize striking *portions* of a count." (Emphasis added.) *Osberg v. Yale University,* Superior Court, judicial district of New Haven, Docket No. CV 08 5021879 (February 11, 2009, Holden, J.); *Day v. Yale University School of Drama,* Superior Court, judicial district of New Haven, Docket No. CV 97 0400876 (March 7, 2000, Licari, J.) (26 Conn. L. Rptr. 634, 638). Accordingly, the motion to strike the sixth count must be denied. [6]

IV

MOTION TO STRIKE THE SECOND, FOURTH, FIFTH, SEVENTH AND EIGHTH COUNTS

The defendant also argues that the all but the first count of the amended complaint should be stricken because the plaintiff "ultimately has one cause of action for which he may recover based on the facts alleged" that is his claim for property to his dog, Shadow, alone. (# 118.25.) The defendant bases this aspect of her motion upon the proposition that General Statutes § 22-350 provides the only relief available to a dog owner under the circumstances of this case. *Id.* Therefore, the defendant argues that any allegations other than those contained in the first count set forth "unnecessary and irrelevant facts" for which the plaintiff cannot lawfully recover. (# 118.25.) The court finds this argument to be unpersuasive and, accordingly, finds these remaining issues in favor of the plaintiff.

***7** As noted, the court has previously denied the defendant's motion to strike the second and fourth counts of the amended complaint. As noted in Part II of this memorandum of decision, the court has denied the defendant's motion to strike the third count of the amended complaint; in Part III, the court has denied the motion to strike the sixth count. Insofar as the defendant's arguments remain applicable to the fifth, seventh and eighth counts of the amended complaint, her concerns with irrelevant, repetitious or unnecessary factual allegations in these counts are properly addressed not by a motion to strike, but through a request to revise. "[A] motion to strike is not the proper vehicle for elimination of irrelevant, immaterial or otherwise improper allegations. The proper vehicle would be a request to revise." (Internal quotation marks omitted.) *Sabatasso v. Bruno,* Superior Court, judicial district of New Haven at Meriden, Docket No. CV 05 4003811 (March 17, 2006, Wiese, J .), citing *Rowe v. Godou,* 209 Conn. 273, 279, 550 A.2d 1073 (1988); *Regal Steel, Inc. v. Farmington Ready Mix, Inc.,* 36 Conn .Sup. 137, 140, 414 A.2d 816 (1980). The court declines, then, to grant this last aspect of the defendant's motion to strike. Furthermore, the defendant's memorandum cites broad principles of the law regarding the calculation of damages as a reason for striking the fifth, seventh, and eighth counts of the amended and revised complaint, although she has not moved to strike the plaintiff's prayer for relief. It is the prayer for relief, however, which, unlike the amended complaint itself, makes specific reference to a claim for, among other things, "exemplary damages and punitive damages ..." (# 116.) See *Pamela B. v. Ment,* 244 Conn. 296, 325, 709 A.2d 1089 (1998) (claim for relief may be stricken where the relief sought could not be legally awarded). For example, the defendant's memorandum submits that a "plaintiff may receive exemplary damages if the defendant causes the injury to the property wantonly or maliciously." (Internal quotation marks omitted; external citation omitted.) (# 118.25.) The memorandum further submits that the "Plaintiff fails to allege that the acts of the defendant are wanton or malicious, therefore, [the] plaintiff is not entitled to exemplary damages." (# 118.25.) These assertions thus focus upon the lack of access to a particular measure of monetary damages, rather than the legal insufficiency of the plaintiff's claims as set forth in the fifth, seventh and/or eighth counts. Through this argument, then, the defendant has presented insufficient basis for granting her motion to strike as to any particular cause of action as set out in the separate counts of the plaintiff's complaint. Accordingly, this aspect of the defendant's argument fails to

support her motion to strike the fifth, seventh and eighth counts of the amended complaint.

As a result, this court is left with the bald assertion contained in the defendant's memorandum that the fifth, seventh and eighth counts should be stricken because the plaintiff "ultimately has one cause of action for which he may recover based on the facts alleged," because "General Statutes § 22-350 states 'all dogs are deemed to be personal property.' " (# 118.25.) The court is constrained from considering grounds for striking the self-represented litigant's complaint, other than those arguments raised by the moving defendant. Generally, "grounds other than those specified should not be considered by the trial court in passing upon a motion to strike ..." *Gazo v. Stamford,* 255 Conn. 245, 259, 765 A.2d 505 (2001); see also *Cyr v. Brookfield,* 153 Conn. 261, 263 216 A.2d 198 (1965) (court could not, in passing on the demurrer, consider grounds other than those specified).

***8** In *Gazo v. Stamford,* the Supreme Court acknowledged that "[although grounds other than those specified should not be considered by the trial court in passing upon a motion to strike ... where the trial court sustains a motion to strike on erroneous grounds, if another ground is appropriate, the granting of the motion will be upheld. *Gazo v. Stamford, supra,* 255 Conn. at 259. Such other ground must have been brought before the court before it could have been considered, however, as *Gazo* further limits this opportunity by expressly noting "[o]n course, the alternative ground must have been alleged in the motion to strike in some form." *Id.,* citing *Morris v. The Hartford Courant Co.,* 200 Conn. 676, 682, 513 A.2d 66 (1986).

In *Morris,* the Supreme Court considered the effect of a court's ruling which granted a motion to strike that, on its face, had failed to distinctly specify the reason for the claimed insufficiency in the complaint. The plaintiff had failed to object to this clearly fatal defect in the motion to strike.[7] *Morris v. The Hartford Courant, supra,* 200 Conn. at 683, n. 5. The Supreme Court sustained the trial court's ruling based on one of the grounds raised by the defendant in the memorandum of law which accompanied its motion to strike; this was not the ground relied upon by the trial court in its decision to grant the motion. *Id.,* at 684. *Morris* notes that the ground upon which the Supreme Court relied "was raised in the defendant's memorandum of law in support of a motion to strike the earlier amended complaint [which was expressly incorporated by reference into the memorandum of law in support of the motion to strike the revised substitute complaint] ... The trial court was, therefore, apprised of the alternative argument and the plaintiff, by virtue of the attached prior pleading, should have been well aware of the claim." *Id.,* at 683 n. 6. Moreover, the court stated: "Despite the fact that the defendant failed to assert a distinct basis for the legal insufficiency of the complaint in its motion to strike, we see no injustice to the plaintiff here, *because its inclusion in the supporting memorandum of law provided adequate and sufficient notice to the plaintiff of a potential inadequacy in his complaint* ..." (Emphasis added.) *Id.,* at 684. As in *Morris,* the plaintiff in the present matter has notice only of the defendant's proposed grounds for striking the fifth, seventh and eighth counts of the amended and revised complaint as set forth in the motion to strike and its memorandum. (# 118, # 118.25.) If this court were to rule on the motion to strike the fifth, seventh and/or eighth counts on any grounds other than those raised by the defendant, it would result in an injustice to the self-represented plaintiff because he has had no notice of any other alleged inadequacies in his complaint. Accordingly the motion to strike the fifth, seventh and eighth counts is denied.

IV

CONCLUSION

***9** For the foregoing reasons, the defendant's motion to strike (# 118) is *DENIED.*

All Citations

Not Reported in A.2d, 2009 WL 1333918, 47 Conn. L. Rptr. 702

Footnotes

1 In construing the complaint, the court has remained mindful that " '[i]t is the established policy of the Connecticut courts to be solicitous of pro se litigants and when it does not interfere with the rights of other parties to construe the rules of practice liberally in favor of the pro se party ... [T]he right of self-representation [however] provides no attendant license not to comply with relevant rules of procedural and substantive law.' (Internal quotation marks omitted.) *State v. Van Eck,* 69 Conn.App. 482, 493, 795 A.2d 582, cert. denied, 260 Conn. 937, 802 A .2d 92, cert. denied, 261 Conn. 915, 806 A.2d 1057 (2002)." *Rowe v. Goulet,* 89 Conn.App. 836, 841-42, 875 A.2d 564 (2005).

2 General Statutes § 22-350 provides, in pertinent part: "All dogs are deemed to be personal property. License fees paid under the provisions of this chapter shall be in lieu of any tax on any dog." Paragraph 6 of the First Count of the amended complaint, incorporated into other counts, alleges that the plaintiff's dog was "properly ... licensed, with fees paid ..." at the time of the incident in question.

3 Moreover, the legislative history of P.A. 07-78 demonstrates the concern of the legislature that domestic violence victims would not leave their abusers because they felt so strongly about the relationship they held with their pets. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 10, 2007 Sess., p. 3305 ("I think the bill represents an awareness that we are increasingly receiving that the welfare of pets has a great effect on the behavior and in fact, the welfare of humans. Katrina was a good illustration. There were people who did not accept evacuation if some beloved animal had to be left behind. People who were in refugee centers were slower to recover and had a more miserable experience because of the fact that their pets were not with them").

4 This court is aware of that the trial courts have not agreed whether close relationships such as those of fiancées are sufficient to satisfy the "closely related" element of bystander emotional distress as contemplated by *Clohessy v. Bachelor,* 237 Conn. 31, 56, 675 A.2d 852 (1996). See, e.g., *Yovino v. Big Bubba's BBQ, LLC,* 49 Conn.Sup. 555, 896 A.2d 161 (2006) (relationship between an engaged couple is sufficient to support a claim for bystander emotional distress); *Biercevicz v. Liberty Mutual Ins. Co.,* 49 Conn.Sup. 175, 865 A.2d 1267 (2004) [38 Conn. L. Rptr. 323] (claim for bystander emotional distress does not extend to a claim made by decedent's fiancée). The court notes that both of the cited trial court decisions predate the implementation of P.A. 07-78 § 1 and its significant expansion of the scope of protection to be provided, in family matters, under General Statute § 46b-15(b).

5 The issue of whether the plaintiff's allegations rise to the level of intentional conduct has not been raised by the defendant as a ground for striking this motion, and therefore is not a ground this court can properly consider at this stage of the proceedings. See Part II C, citing *Gazo v. Stamford,* 255 Conn. 245, 259, 765 A.2d 505 (2001) and *Cyr v. Brookfield,* 153 Conn. 261, 263 216 A.2d 198 (1965).

6 In reaching this conclusion, the court recognizes the trial court decisions which have permitted the striking of particular paragraphs within a single count. However, such rulings seem to be issued only in response to a movant's specific request, which implies notice to the adversary and an opportunity for argument in objection to such action. See, e.g., *Wright v. 860 Main, LLC,* Superior Court, judicial district of Hartford, Docket No. CV 06 5007079 (May 21, 2007, Tanzer, J.) [43 Conn. L. Rptr. 458]; *St. Amand v. Kromish,* Superior Court, judicial district of Ansonia-Milford, Docket No. CV 95 051663 (February 18, 1999, Corradino, J.) [24 Conn. L. Rptr. 103]; *Nordling v. Harris,* Superior Court, judicial district of Fairfield, Docket No. 329660 (August 7, 1996, Levin, J.) [17 Conn. L. Rptr. 296]. In the present case, this remedy is inapposite, as the plaintiff has not specifically requested that Paragraph 28 be stricken from the sixth count, but has attacked that count in its entirety. Accordingly, in the absence of notice to the plaintiff, the court declines to strike a portion of the sixth count.

7 In reaching this determination, the court acknowledges that the defendant has not stated with specificity the basis for any claimed legal insufficiency with regard to the statutory foundation upon which of the fifth, seventh

or eighth counts are based. Generally, "Motions to strike that do not specify the grounds of insufficiency are fatally defective and, absent a waiver by the party opposing the motion, should not be granted ... Our Supreme Court has stated that a motion to strike that does not specify the grounds of insufficiency is fatally defective ..." (Internal quotation marks omitted.) *Stuart v. Freiberg,* 109 Conn.App. 857, 861, 927 A.2d 343 (2007).

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2022 WL 2380560
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
J.D. OF MIDDLESEX AT MIDDLETOWN.

Marli FIELD
v.
ASTRO LOGISTICS, LLC

DOCKET NO. MMX-CV22-6033510-S
|
JUNE 30, 2022

MEMORANDUM OF DECISION RE: MOTION TO STRIKE #105 AND OBJECTION #108

Rupal Shah

I

BACKGROUND

***1** The defendant, Astro Logistics, LLC ("Astro Logistics"), seeks to strike counts two through seven of the plaintiffs' complaint dated February 10, 2022, claiming the plaintiffs state legally insufficient claims and seek damages that are not compensable under Connecticut law. With respect to plaintiff Marli Field, count two seeks damages for bystander emotional distress arising out of injuries to her dog. Count three seeks damages for negligent infliction of emotional distress for the same injuries. In counts four and five, the plaintiffs assert identical claims on behalf of Michael Field. In counts six and seven, they assert identical claims on behalf of Jannelle Field. The plaintiffs object and argue they have pleaded sufficient claims for each of the counts.

The complaint alleges that, on April 22, 2021, an agent, servant and/or employee of Astro Logistics was operating a vehicle owned by Astro Logistics when it struck the Fields' dog. According to the complaint, the dog suffered injuries and required surgeries and medical procedures. The bystander emotional distress counts all allege that the plaintiffs "sensorily perceived the collision and [were] with the dog before substantial change occurred to its condition." The plaintiffs filed a twenty-one count complaint against these defendants as well as co-defendants My Amazon, LLC and Amazon.com Services, LLC.

The court heard the matter remotely on June 16, 2022. After consideration, the court finds that the plaintiffs have not sufficiently pleaded claims for negligent intentional infliction of emotional distress but have pleaded viable claims for bystander emotional distress. Accordingly, the defendant's motion to strike is denied for counts two, four and six and granted with respect to counts three, five and seven.

II

LEGAL STANDARD

"A motion to strike challenges the legal sufficiency of a pleading, and, consequently, requires no factual findings by the trial court." (Internal quotation marks omitted.) *Bernhard-Thomas Building Systems, LLC* v. *Dunican*, 286 Conn. 548, 552, 944 A.2d 329 (2008). "The allegations of the pleading involved are entitled to the same favorable construction a trier would be required to give in admitting evidence under them and if the facts provable under its allegations would support a defense or a cause of action, the motion to strike must fail." *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 108-09, 491 A.2d 368 (1985).

"To prevail on a claim of negligent infliction of emotional distress, the plaintiff must prove: (1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." (Internal quotation marks omitted.) *Grasso* v. *Connecticut Hospice, Inc.*, 138 Conn. App. 759, 771, 54 A.3d 221 (2012).

To prevail on a claim for bystander emotional distress, "a bystander may recover damages for emotional distress under the rule of reasonable foreseeability if the bystander satisfies the following conditions: (1) he or she is closely related to the injury victim, such as the parent or the sibling of the

victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim's condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical injury; and (4) the bystander's emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response." *Clohessy* v. *Bachelor*, 237 Conn. 31, 56, 675 A.2d 852 (1996).

III

DISCUSSION

***2** Based on the allegations made in the plaintiffs' complaint, the plaintiffs contend they have sufficiently pleaded claims of negligent infliction of emotional distress and bystander emotional distress against the defendant. The defendant contends that none of these claims are viable because they relate to the injuries of a dog, which are classified as personal property pursuant to General Statutes § 22-350.

With respect to the third, fifth and seventh counts alleging negligent infliction of emotional distress, the court finds the plaintiffs have failed to make a legally sufficient claim. Since the Appellate Court has addressed the issue of whether a claim for negligent infliction of emotional distress can be made as a result of an injury to a pet, the court is bound by this precedent. See *Myers* v. *Hartford*, 84 Conn. App. 395, 403, 853 A.2d 621 (2004). In *Myers*, the Appellate Court expressly prohibited claims for noneconomic damages and emotional distress due to injury, or death, of the plaintiff's pet, where the plaintiff sought to recover damages for emotion distress after her pet dog was seized from her premises by the city and then euthanized. Id. The Appellate Court expressly held that "[o]ur common law has never recognized a right to sue an individual for intentional or negligent infliction of emotional distress resulting from injury to such property as a pet." Id., 402. Since *Myers*, Connecticut courts that have considered this issue have overwhelmingly stricken claims for emotional distress arising out of injury, or death, of a pet as being improper under Connecticut law. See, e.g., *Miller* v. *Hamden*, Superior Court, judicial district of New Haven, Docket No. CV-186079834-S (May 28, 2019, *Wilson, J.*) (68 Conn. L. Rptr. 624, 625) (agreeing that the binding authority of *Myers* precludes such a claim); *Troland* v. *Graham*, Superior Court, judicial district of New London, Docket No. CV-165015122-S (June 15, 2017, *Bates, J.*) (judgment in favor of defendant on all claims; did not reach specific emotional distress component of claimed damages); *Sweeney* v. *Gustafson*, Superior Court, judicial district of Hartford, Docket No. HHD-CV-15-6056539-S (June 26, 2015, Elgo, J.) (60 Conn. L. Rptr. 573, 574) (striking emotional distress claims); *Bonilla* v. *Connecticut Veterinary Center, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-136040848-S (December 18, 2013, *Wiese, J.*) (57 Conn. L. Rptr. 335, 336) (striking emotional distress and bystander emotional distress claims); *Medura* v. *Town & Country Veterinary Associates, P.C.*, Superior Court, judicial district of Hartford, Docket No. CV-116018916-S (August 10, 2012, *Woods, J.*) (54 Conn. L. Rptr. 483, 486) (striking emotional distress claims for injury to pet); *Pantelopoulos* v. *Pantelopoulos*, 49 Conn. Supp. 209, 215-16, 869 A.2d 280 (2005) (same).

However, with respect to the claims for bystander emotional distress, the court does not read the *Myers* decision as narrowly as the defendant champions. See *Vaneck* v. *Cosenza-Drew*, Superior Court, judicial district of Middlesex, Docket No. CV-08-5003942-S (April 20, 2009, *Rubinow, J.*) (rejecting narrow reading of *Myers* as foreclosing on claim for bystander emotional distress in this context). It is distinguishable from the present case and only concerned a claim for negligent or intentional infliction of emotional distress. Factually, the *Myers* case did not involve a claim where the plaintiff had witnessed the circumstances or events that caused her pet's death. The court relied upon the fact that "our common law has not extended the right to sue for damages for the deprivation of such close human relationships when the plaintiff has not witnessed the fatal injury, it would be incongruous to extend it to emotional distress resulting to a person from the loss of a pet." *Myers* v. *Hartford*, supra, 48 Conn. App. 403. But, the court also acknowledged that "[l]abeling a pet as property fails to describe the emotional value human beings place on the companionship that they enjoy with such an animal." Id., 402.

***3** As our Supreme Court has acknowledged, a claim for bystander emotional distress is an entirely different claim than one for negligent or intentional infliction of emotional distress. See *Clohessy* v. *Bachelor*, 237 Conn. 31, 46, 675 A.2d 852 (1996). In defining the factors required for bystander liability, a party must allege that: "(1) he or she is closely related to injury victim, such as parent or sibling of victim; (2) the emotional injury of bystander is caused by

contemporaneous sensory perception of event or conduct that causes injury, or by arriving on scene soon thereafter and before substantial change has occurred in victim's condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical injury; and (4) bystander's emotional injury must be serious, beyond that which would be anticipated in disinterested witness and which is not the result of an abnormal response." Id., 56. With respect to the first factor, the court further elaborated that "[t]he class of potential plaintiffs should be limited to those who because of their relationship suffer the greatest emotional distress. When the right to recover is limited in this manner, the liability bears a reasonable relationship to the culpability of the negligent defendant." (Internal quotation marks omitted.) Id., 52. The court refused to define the limits of those relationships and left the issue for another day. Id.

Trial courts that have determined whether a bystander was closely related have looked at several factors to determine whether a cause of action for bystander emotional distress can be maintained. See *Yovino* v. *Big Bubba's BBQ, LLC*, 49 Conn. Supp. 555, 565, 896 A.2d 161 (2006). "The closely related analysis hinges on whether [the parties] have a close relationship that is stable, enduring, substantial, and mutually supportive ... cemented by strong emotional bonds and provid[ing] a deep and pervasive emotional security.... The inquiry should take into account the duration of the relationship, the degree of mutual dependence, the extent of common contributions to a life together, the extent and quality of shared experience, and ... whether the plaintiff and the injured person were members of the same household, their emotional reliance on each other, the particulars of their day to day relationship, and the manner in which they related to each other in attending to life's mundane requirements." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *Carcaldi* v. *McKenzie*, Superior Court, judicial district of Danbury, Docket No. CV-13-6013956-S (April 24, 2013, *Roraback, J.*).

Based on these factors, the plaintiffs' claims for bystander emotional distress based on a relationship to the dog may be met. In the absence of any limit imposed by our appellate courts, this court will not impose a limit in the law that does not otherwise exist. Accordingly, the court finds that the plaintiff has sufficiently alleged a claim for bystander liability.

IV

CONCLUSION

For the reasons provided herein, the motion to strike counts two, four and six of the complaint is denied and granted with respect to counts three, five, and seven.

So ordered.

All Citations

Not Reported in Atl. Rptr., 2022 WL 2380560

2023 WL 8055855
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
J. D. OF DANBURY.
AT DANBURY.

David GORDON
v.
Marie MINCK, et al.

DOCKET NO.: DBD-CV-23-6045424-S
|
NOVEMBER 13, 2023

MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION TO STRIKE (#107.00)

Medina, J.

The Nature of the Proceedings

***1** Plaintiff David Gordon (hereinafter, "Gordon" or "plaintiff") seeks money damages from defendants Marie Minck and Jeffrey Minck (hereinafter, collectively the "defendants") for injuries plaintiff allegedly suffered as a result of an accident which occurred on March 12, 2021 in New Milford. Plaintiff alleges he was a pedestrian on Danbury Road accompanied by his dog when they were both struck by a vehicle owned by defendant Jeffrey Minck and operated by defendant Marie Minck. The third count of plaintiff's January 30, 2023 complaint seeks damages for common law bystander distress plaintiff allegedly suffered because he "witnessed his dog be struck by the defendant's motor vehicle and be seriously injured and killed." (Comp. Count Three, ¶ 8).

Defendants have moved to strike (#107.00) plaintiff's third count on the ground that Connecticut law does not recognize a bystander emotional distress claim premised on the loss of an animal. Plaintiff has objected (#109.00) to the motion to strike. The court has carefully reviewed the challenged count and considered all of the parties' respective submissions and arguments.

On the basis of the current record and for the reasons set forth below, the motion to strike is granted.

STANDARD

When ruling upon a motion to strike, this court must accept all well-plead facts but not legal conclusions or opinions. *Mingachos* v. *CBS, Inc.*, 196 Conn. 91, 108 (1985). Complaints are to be construed "in the manner must favorable to sustaining legal sufficiency" and if "facts provable in the complaint would support a cause of action, the motion to strike must be denied." *Battle-Homngren* v. *Commissioner of Public Health*, 281 Conn. 277, 294 (2007). However, the court may not consider arguments or proffered inferences offered to supplement the challenged count as the court is limited to the facts actually alleged in the complaint. *Faulkner* v. *United Technologics Corp.*, 240 Conn. 576, 580 (1997).

DISCUSSION

1

A. Plaintiff's Third Count
Plaintiff's third count incorporates paragraphs 1-6 of his first count and adds:

7. As a result of the collision, the plaintiff's dog suffered severe injuries and died.

8. The plaintiff, David Gordon, witnessed his dog be struck by the defendant's motor vehicle and be seriously injured and killed.

9. The plaintiff, David Gordon, sensorily (sic) perceived the collision and was with the dog before substantial change occurred to its condition.

10. As a result of the witnessing his dog suffer severe injuries and die, the plaintiff, David Gordon, suffered severe emotional distress.

11. As a further result of witnessing his dog suffer severe injuries and die, the plaintiff, David Gordon, was unable to participate in and enjoy his usual activities.

B. Causes of Action

Plaintiff's complaint does not seek economic damages for the loss of his dog. Plaintiff does not seek recovery for either the intentional or negligent infliction of emotional distress. Plaintiff asserts a claim of bystander emotional distress. To recover on a claim of common law bystander emotional distress, plaintiff must satisfy four conditions: (1) he or she is closely related to the injury victim, such as the parent or the sibling of the victim; (2) the emotional injury of the bystander is caused by the contemporaneous sensory perception of the event or conduct that causes the injury, or by arriving on the scene soon thereafter and before substantial change has occurred in the victim's condition or location; (3) the injury of the victim must be substantial, resulting in his or her death or serious physical injury; and (4) the bystander's emotional injury must be serious, beyond that which would be anticipated in a disinterested witness and which is not the result of an abnormal response, *Clohessy v. Bachelor, 237 Conn. 31, 56 (1996)*.

C. Connecticut Statutory Law Re: Dogs

***2** Defendants correctly argue that Connecticut law classifies dogs as "personal property." General Statutes § 22-350 ("all dogs are deemed to be personal property"). Consistent with the treatment of dogs as property, the law also provides for an award of "economic damages" to a dog owner from anyone who "intentionally kills or injures a companion animal." General Statutes § 22-351a(b). A domesticated dog is a companion animal. General Statutes § 22-351a(a). That same statute allows the court the discretion, within certain limits, to also assess punitive damages and a reasonable attorney's fees. § 22-351a(c). Notwithstanding the foregoing, the court notes that General Statutes § 22-351 provides for both fines and imprisonment for anyone who intentionally kills a companion animal. While that statute does not apply to the facts of this case, its existence is evidence of Connecticut public policy assigning value to the life of a companion animal beyond just the replacement value of a possession.

D. Connecticut Case Law Re: Dogs

For more than 80 years, Connecticut has recognized a cause of action for economic damages relating to the negligent killing of a registered dog. See, *Griffin* v. *Fancher*, 127 Conn. 686, 688 (1941) based on a dog's status as chattel. See, *Angrave* v. *Oates*, 90 Conn. App. 427, 430 n.3. Defendants vigorously argue that *Myers* v. *Hartford*, 84 Conn. App. 395 (2004) compels this court to grant their motion to strike. Eleanor Myers sued two Harford municipal employees for taking and euthanizing her dog. Myers asserted two causes of action: intentional infliction of emotional distress and negligent infliction of emotional distress. Plaintiff also sued the City of Hartford as the alleged indemnitor of the two employees. The trial court (Booth, J.) granted defendants' motion for directed verdict on the basis that the defendants enjoyed qualified municipal immunity.

The Appellate Court affirmed the directed verdict judgment on grounds other than those asserted by the defendants, concluding that there was no colorable common law authority which would allow plaintiff to recover under either of the two causes of action in her complaint. The Appellate Court therefore did not have to reach the issue of whether the common law would support a bystander distress claim. In fact, the Appellate Court noted that plaintiff failed to state a colorable cause of action "... by pleading *only* claims for intentional and negligent infliction of emotional distress ..." *Myers 84 Conn. App. at 625 (emphasis added)*. This court deems the Appellate Court's inclusion of the word "only" to be meaningful. To be sure, despite acknowledging the "emotional value humans place on the companionship that they enjoy" from their pets, the Appellate Court cited the lack of common law authority *Myers 84 Conn. App. at 626* for its ultimate holding but again took pains to note that it applied to the two causes of action referenced above. The court mentioned bystander emotional distress as the only basis for recovery for the loss of a child or spouse *Id.*

Based on the foregoing, this court concludes that a strict reading of *Myers* does not require it to grant defendants' motion to strike *See also, Field v. Astro Logistics, LLC, Superior Court, judicial district of Middlesex at Middletown, Docket No. MMX-CV-22-6033510-S (June 30, 2022, Shah, J.)* This is a close question and the court acknowledges and respects those decisions which have reached a contrary result *See, Brisson v. These Guys New York Deli Corp., judicial district of Fairfield at Bridgeport, Docket No. FBT-CV-22-6112778-S (January 20, 2023, Reed, J.) and Carcaldi v. McKenzie,* Superior Court, judicial district of Danbury, Docket No. CV-13-6013956-S (April 24, 2014, Roraback, J.). Ultimately, appellate rulings will resolve the split in authority.

If this court believed its ruling was a "derogation of its fidelity to the principles which limit its authority" *Brisson at *3,* it would conclude otherwise. However, our Supreme Court has acknowledged that "our common law is constantly in process of gradual but steady evolution" *Griffin 127 Conn. at 688.* More recently, the Supreme Court has also recognized that the recognition of a new cause of action may be "clearly

foreshadowed", *Clohessy 237 Conn. at 56 (1996)*. Perhaps most relevant to the discussion of this issue of a trial court's permissible role in the development of the common law is the Court's citation, without disapproval, of trial court decisions which recognized the tort of bystander emotional distress *prior* to its *Clohessy* decision, *Id.*

***3** Applying the *Clohessy* four part test to this case, the court concludes that properly plead, a complaint can survive a motion to strike where it alleges (1) the bystander was "closely related" to the victim (here, the court respectfully disagrees with those decisions which limit the word "related" to only familial, personal relationships) (2) the bystander emotional injury was caused by the "contemporaneous sensory perception" of the event (3) the injury resulted in death and (4) plaintiff must have suffered a "serious emotional injury" *Clohessy 237 Conn. at 51-54 (1996)*. As to the third factor, while *Clohessy* defined it as "death or serious physical injury" this court concludes that when the victim was the plaintiff's pet, death is required to assert the cause of action. As presently plead, the court concludes the plaintiff's third count does not satisfy the first of the four *Clohessy* elements. There are no allegations regarding the length of the relationship of the plaintiff and victim or the importance of the victim to the plaintiff. The victim is not even identified by name. On that basis, the motion to strike is granted.

The court is not unaware that its ruling does in fact open the door to the necessity of drawing lines based on facts yet known and creates the possibility of expanding the universe of claims which defendants must face, all factors identified by the Appellate Court as reasons to proceed cautiously in expanding the common law. In the final analysis, this court concludes that the principles underlying the Supreme Court's recognition in *Clohessy* of the bystander emotional distress duty may, upon a sufficiently plead allegation, state a claim for the serious emotional damages plaintiff allegedly suffered as a result of witnessing the killing of his pet as a result of defendant's alleged negligence.

All Citations

Not Reported in Atl. Rptr., 2023 WL 8055855

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